

March 23, 1999

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 - 12th Street, S.W.  
TW-A325  
Washington, D.C. 20554

RECEIVED  
MAR 23 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ORIGINAL

**Re: Ex Parte Presentation in CC Docket No. 96-98**

Dear Ms. Salas:

Today the undersigned, accompanied by David Gusky and Stephen D. Trotman, Executive Vice President and Director of Local Services, respectively, of the Telecommunications Resellers Association ("TRA"), met with Carol Matthey, Chief, Michael Pryor, Deputy Chief, Jake E. Jennings, Claudix Fox and Andrea Kearney of the Policy and Program Planning Division. Discussed at that meeting were issues of concern to the membership of TRA with respect to the Commission's reassessment of the "necessary" and "impair" standards in light of the U.S. Supreme Court decision in AT&T Corp., et al. v. Iowa Utilities Board. The positions articulated by TRA at the meeting are set forth in the materials attached hereto, which were distributed at the meeting by TRA.

Respectfully submitted,



Charles C. Hunter  
General Counsel to the  
Telecommunications Resellers Association

Enclosure

No. of Copies rec'd 0+1  
List A B C D E



Telecommunications  
Resellers  
Association

1730 K Street, N.W.  
Suite 1201  
Washington, D.C. 20006

Tel: (202) 835-9898  
Fax: (202) 835-9893

## **THE "NECESSARY" AND "IMPAIR" STANDARDS**

### **Predicates**

- The Supreme Court faulted the Commission for not "adequately consider[ing]," and for failing to "giv[e] some substance to the 'necessary' and 'impair' requirements'." This was the sole error identified by the Court.
- Given the Supreme Court's narrow ruling, the Commission has wide latitude in addressing the Court's limited concerns:
  - The Commission's initial implementation of Section 251(d)(2) pushed the outer edge of the envelope – *i.e.*, limiting inquiry to the incumbent's own network and assuming that *any* increase in cost (or decrease in quality) was enough to impair a competitor's ability to provide local service.
  - The Supreme Court required only that the Commission apply "*some* limiting standard, rationally related to the goals of the Act" in implementing the necessary and impair standards.
- The Supreme Court's affirmation of the Commission's general jurisdiction to implement the Telecommunications Act and the Court's application of that jurisdictional authority in defining network elements enhances the Commission's decisional flexibility.
- The Commission should be guided by the pro-competitive goals of the telephony portions of the Telecommunications Act, as well as the specific vehicles identified by Congress to achieve these ends -- *i.e.*, three co-equal market entry vehicles, one of which was the availability to competitors of unbundled access to the various elements that comprise the incumbent LEC networks.
- The Section 271(c)(2)(B) "competitive checklist" supports maintenance of the current list of unbundled network elements -- *i.e.*, unbundled access to local loops, local switching, and local transport.

### **Necessary Actions**

- Preserve and expand (as necessary) the existing federal minimum set of seven unbundled network elements ("UNEs"):

"We find no basis for permitting an incumbent LEC in some states not to make available these minimum technically feasible network elements that are provided by incumbent LECs in other states."

*Local Competition Order at ¶ 54.*

- Retain full federal authority over any exceptions granted to and any reduction of federal minimums; individual states should be permitted to expand, but not reduce, the original set of seven UNEs:

"If fifty states were to establish different unbundling requirements, new entrants, including small entities, could be denied the benefits of scale economies in obtaining access to unbundled elements."

*Local Competition Order at ¶ 224.*

- Require incumbents to carry the burden of demonstrating satisfaction of "necessary" and "impair" standards before the availability of any given UNE is limited:

"We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to . . . make use of the incumbent LEC's network and services."

*Local Competition Order at ¶ 57*

- Retain existing interpretation of "proprietary" – *i.e.*, "elements with proprietary protocols or elements containing proprietary information" – but do not include within the bounds of that definition data or information derived by the incumbent LEC from its status as a franchised monopoly provider of local exchange service.
- Adopt "necessary" and "impair" standards firmly grounded in competitive reality.
- Look outside the incumbent's network, but this should only be the beginning of the Commission's assessment of whether access to a given network element is necessary and whether the unavailability of that element from an incumbent LEC would impair the ability of new market entrants to compete. In looking outside the incumbent's network, the unique attributes of incumbent LEC network elements, including their integration into the incumbent LEC's network should be weighed heavily.

- Require demonstrations of realistic, practical availability of alternatives; the mere theoretical availability of an alternative should not be credited. Market forces sufficient to drive the availability of alternative sources of supply must be present and working.
- The theoretical ability of competitors to construct and install facilities should be considered.
- Introduce the concept of materiality in assessing the impact of the unavailability of a given network element from an incumbent LEC.
- Factors which should be deemed to constitute an impairment of a new market entrant's ability to provide a competitive service:
  - cost differentials: would the unavailability of a given UNE materially increase a competitor's costs.
  - economies of scale: would the unavailability of a given UNE deny a competitor the benefit of the incumbent LEC's economies of scope, scale, density or connectivity.
  - time to market delays: would the unavailability of a given UNE result in a material delay in a competitor's provision of service.
  - increased complexity: would the unavailability of a given UNE increase the difficulties inherent in provisioning, combining or otherwise utilizing that or other UNEs.
  - reduced service quality: would the unavailability of a given UNE materially reduce the quality of the service a competitor could provide.
  - reduced service diversity: would the unavailability of a given UNE materially reduce the variety of services a competitor could offer its customers.
  - decreased coverage area.: would the unavailability of a given UNE materially reduce the area a competitor could serve.

### **UNE DEFINITIONAL CHANGES**

- Incorporate xDSL electronics and other equipment into the definition of a loop once an incumbent LEC has deployed xDSL capabilities within its distribution plant.
- Clarify that the local switching element includes data, as well as voice, switching configurations.

### **TRA'S INTEREST**

- Current resale margins are insufficient to support long-term resale strategy; migration over time to unbundled network elements will be required.
- Because of their limited financial resources, smaller providers will be most adversely impacted by the sporadic unavailability from incumbents of individual UNEs.
- Smaller providers will be unable to match what will likely be the incumbents' persistent regulatory initiatives on state level.

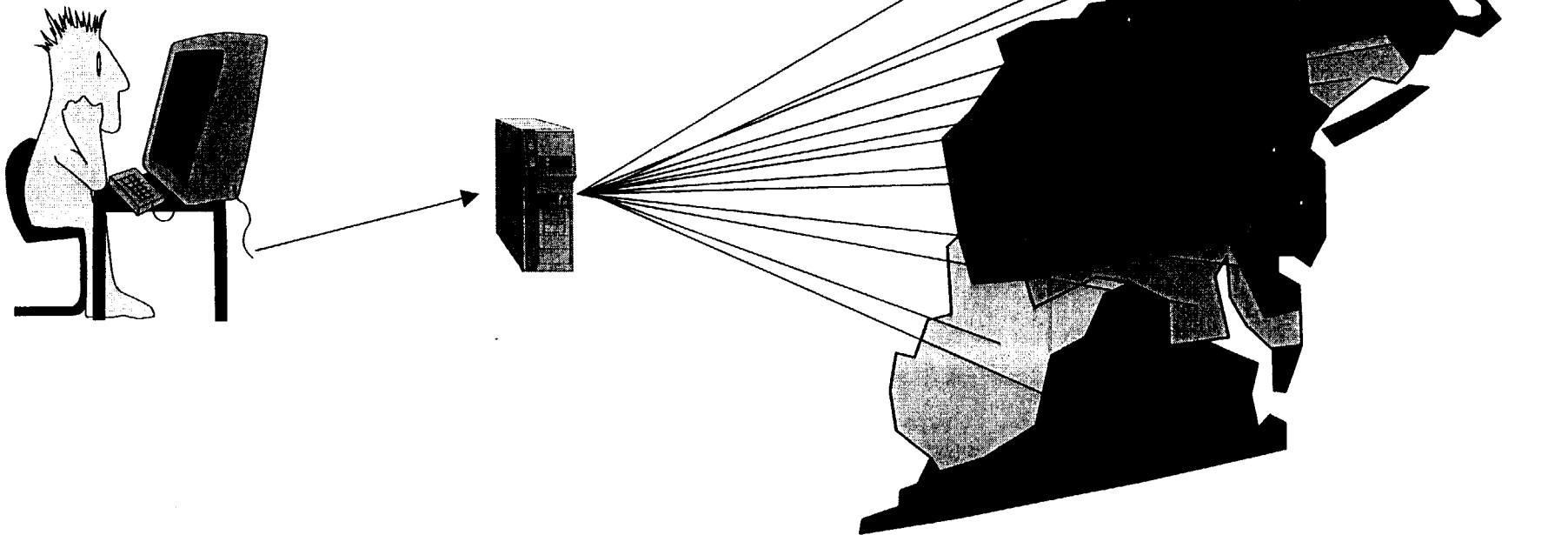
# Unbundled Network Elements

Lack of Consistency Will Lead To  
Unnecessary Complexity

# Impact on Competitors

- Increased Cost
  - Higher deployment costs
  - Lower economies of scale
- Reduced potential to serve serve an equally broad base of customers.
- Unnecessary Complexity
- Extended provisioning intervals
- Impaired support capability
  - Delayed Repair & Maintenance

**Consistent UNE  
availability by ILECs  
provides a single  
point of interface for  
ubiquitous coverage.**



# Bell Atlantic Region CLECs

Company	# of BTAs
Hyperion	24
ART	19
MCIWorldcom	15
AT&T	12
USN	9
NextLink	7
Winstar	7
Allegiance	5
ACSI	4
Focal	4
Covad	3
MFN	3
RCN	3
Time Warner	3
MediaOne	2
Vitts	2
Cablevision Lightpath	1
Cox Fibernet	1
Northpoint	1
Teligent	1
<b>Total</b>	<b>126</b>
Telecommunications Resellers Association	

- 20 CLECs have operational or planned facilities in 35 BTA's within Bell Atlantic territory.

*Source: Telephony Scorekeeper: United States  
The Strategis Group, 1998*

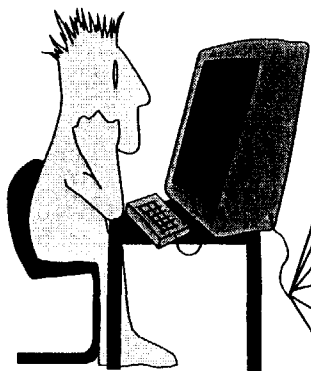
# Required Interfaces

- Relationship/interface with 6 CLECs would be required to cover all 35 BTAs supported by facility based competitors.

Company/BTA	7	10	12	29	43	46	51	60	63	75	131	179	181	184	240	318	321	324	330	346	350	364	370	374	379	412	427	438	459	461	480	483	Total	
Hyperion	1	1	1	1	1			1	1	1	1	1	1	1	1		1	1	1	1	1		1	1		1	1	1	1	1		1	24	
ART	1	1		1			1	1					1	1			1	1		1	1		1	1	1	1	1	1	1				19	
	1			1			1	1						1		1				1	1	1	1	1	1		1			1			15	
	1			1			1	1						1			1		1	1		1			1	1		1		1			12	
USN	1						1	1								1		1				1					1	1				1	9	
NextLink		1											1		1					1				1			1	1			1		7	
Winstar				1			1										1			1	1		1							1		7		
Allegiance				1			1										1			1										1		5		
				1		1											1													1		4		
Focal							1										1			1										1		4		
Covad					1		1										1															3		
MFN																	1			1										1		3		
RCN							1										1													1		3		
Time Warner	1			1													1															3		
MediaOne							1																	1								2		
Vitts							1								1																	2		
Cablevision Lightpath																	1															1		
Cox Fibernet																		1														1		
Northpoint							1																									1		
Teligent																														1		1		
	6	3	1	7	2	2	12	5	1	1	1	1	3	3	2	3	1	14	3	1	1	9	5	1	5	2	4	2	3	3	4	1	12	126

Source: Telephony Scorekeeper: United States  
The Strategis Group, 1998

**Inconsistent UNE  
availability by ILECs  
leads to multiple  
points of interface  
for complex web of  
coverage.**



Telecommunications Resellers Association

# Affected Areas of Operation

- Pre-order activity
  - CSR Validation
  - Network Configuration
- Ordering
- Provisioning
- Account Maintenance
  - Moves, Adds & Changes
- Repair & Maintenance
- Billing